No. 90-644

Supreme Court, U.S.
FILED
NOV 28 1990
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1990

JAMES G. LEDBETTER, COMMISSIONER,
GEORGIA DEPARTMENT OF HUMAN RESOURCES,

Petitioner,

v.

MARTA O. TURNER, ET AL.,

Respondents.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

REPLY BRIEF FOR THE PETITIONER

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Petitioner responds to two factual contentions raised in Respondents' Brief In Opposition. Respondents allege that the named Plaintiff Marta Turner is the only class member in this case with an overpayment, making the amount in controversy only $1,152. (Brief in Opp., pp.5, 13). Respondents' assertion is clearly incorrect. The evidence in this case is undisputed that most lump sum recipients would have some overpayment. In this regard, the head of the Aid To Families With Dependent Children

(AFDC) program in Georgia testified in response to counsel for Respondent's cross-examination as follows:

> Q. Since the people who receive a lump sum are disqualified in the month of the receipt and they have ten days also to report that, isn't it true that probably they're going to be penalized with an – or have an overpayment? Isn't it true that most lump sum recipients are going to have an overpayment?
>
> A. Yes. That's true.

Deposition of Mary Jane Burns at 25, submitted with Respondents' Motion for Summary Judgment. R.5-26-1.

The record also contains evidence submitted by the Respondents of class members other than Marta Turner who have overpayments. In Plaintiffs' Statement of Undisputed Material Facts In Support of Plaintiffs' Motion for Summary Judgment, ¶ 39 at R.5-26-9 states that Bonnie Allgood's AFDC was continued pending appeal and ¶ 51 at R.5-26-11 states that Elizabeth Brown was charged with an overpayment. In sum, the record does not support Respondents' statement that no class member other than Marta Turner has an overpayment; rather, the evidence is directly to the contrary.

The record further shows that it would have cost in excess of $3 million for the State to manually search case files during the litigation to find all lump sum recipients. Affidavit of Martha Chambers, Exhibit C to Brief of Defendant on Pending Relief Issues. R.8-36-105 – 106. The trial court did not order such relief and such a search was never undertaken. For this reason, the record does not contain an exact number of overpayments, nor does it

contain an exact number of class members. Nevertheless, it is clear that the plaintiffs requested in their complaint class relief on the overpayments issue, as well as all other issues, and obtained classwide relief. Pet. App. 14a, 29a-29a. Estimates have now been made of the total of overpayments in Georgia based upon the responses of AFDC recipients to the notices ordered by the trial court, Pet. App. 15a; however, these estimates were made after the record was sent to the Court of Appeals.

Respondents also suggest that they received no notice of termination of their benefits. Respondents state "that in most cases AFDC families learned that they would not receive AFDC only when their next month's check did not arrive." Brief in Opp., p.13. Although the trial court clearly found problems with the notices, the problems were not concerning whether notices were sent at all or whether notices were timely. The sole notice issue resolved by the trial court addressed the adequacy of the notices. Pet. App. 40a. Therefore, the Respondents' implication that no notice was sent is erroneous.

In conclusion, Petitioner respectfully reaffirms its request that this Court issue a writ of certiorari to review

the decision of the Eleventh Circuit Court of Appeals in this matter.

Respectfully submitted,

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